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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

13 JAMES RAFTON, TRUSTEE OF THE
14 JAMES AND CYNTHIA RAFTON TRUST,
et al.,

No. CV 10-01171 LHK

Action Filed: March 19, 2010

Plaintiffs,

V.

RYDEX SERIES FUNDS; et al.,

**[PROPOSED] ORDER GRANTING
UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF
PROPOSED CLASS SETTLEMENT
AND APPROVAL OF NOTICE PLAN**

Defendants.

Date: September 8, 2011
Time: 1:30 p.m.
Dept: Courtroom 8, 4th Floor
Judge: Hon. Lucy H. Koh

1 WHEREAS, Lead Plaintiffs James Rafton and James Darst, on behalf of themselves and
 2 the Settlement Class (as hereinafter defined) have applied to the Court pursuant to Rule 23(e) of
 3 the Federal Rules of Civil Procedures for: (1) an order approving the settlement of the above-
 4 captioned litigation (the “Action”) in accordance with the Stipulation and Settlement Agreement
 5 dated July 28, 2011 (“Stipulation”), which together with the exhibits annexed thereto, sets forth
 6 the terms and conditions for a proposed settlement of the Action (the “Settlement”); (2) dismissal
 7 of the Action with prejudice as to all Defendants upon the terms and conditions set forth in the
 8 Stipulation; and (3) certification of the Action as a class action for settlement purposes only; and
 9 (4) approval of the form and method for providing notice of the Settlement to the Class and the
 10 schedule therefor.

11 WHEREAS, the Defendants do not oppose the motion for preliminary approval of the
 12 settlement;

13 WHEREAS, the Court is familiar with and has reviewed the record in the Action and has
 14 reviewed the Stipulation, including the exhibits attached to the Stipulation, and found good cause
 15 for entering the following Order;

16 NOW, THEREFORE, IT IS HEREBY ORDERED:

17 1. This Preliminary Approval Order (“Order”) hereby incorporates by reference the
 18 definitions in the Stipulation, and all terms used herein shall have the same meanings as set forth
 19 in the Stipulation.

20 2. The Court hereby grants preliminary approval to the Settlement and the
 21 Stipulation, subject to further consideration at the Final Approval Hearing described below;

22 3. Pending further order of the Court, all litigation activity, except that contemplated
 23 in this order, in the Stipulation and the Notice(s) of Pendency and Proposed Settlement of Class
 24 Action, annexed thereto is hereby stayed and all hearings, deadlines and other proceedings in this
 25 Action, except the Final Approval Hearing, are hereby taken off calendar.

26 **CLASS CERTIFICATION**

27 4. Pursuant to Federal Rule 23, the Court certifies the following Class for settlement
 28 purposes:

1 All persons and entities (“Class” or “Class Members”) who purchased or otherwise acquired
 2 shares of the Rydex Inverse Government Long Bond Strategy Fund (“Rydex Fund”) from August
 3 1, 2007 through July 31, 2009, inclusive (“Class Period”) and who were damaged thereby.
 4 Excluded from the Class are: Defendants; the Rydex Defendants’ officers and directors;
 5 members of Defendants’ immediate families; Defendants’ legal representatives, heirs, successors,
 6 or assigns; and any entity in which Defendants have or had a controlling interest. Also excluded
 7 from the Class are any proposed Class Members who properly exclude themselves by filing a
 8 valid and timely request for exclusion in accordance with the requirements set forth in the Notice
 9 and Publication Notice.

10 5. The Court finds that certification of the Class meets the requirements of Federal
 11 Rule 23 as follows:

12 a. The Class consists of thousands of members, and is sufficiently large and
 13 geographically dispersed that joinder of all Class Members is impracticable, and accordingly
 14 satisfies Federal Rule 23(a)(1).

15 b. There are questions of law and fact common to the Class that satisfy
 16 Federal Rule 23(a)(2), including but not limited to: whether the 2007 and 2008 Rydex Fund
 17 Registration Statements contained a material misstatement or omission when they became
 18 effective in violation of §11 of the Securities Act of 1933; whether either the 2007 or the 2008
 19 Rydex Fund Prospectus contained “an untrue statement of material fact or omit[ted] to state a
 20 material fact necessary in order to make the statements, in light of the circumstances under which
 21 they were made, not misleading,” in violation of §12(a)(2) of the Securities Act of 1933; whether
 22 and to what extent Class Members have sustained damages and the proper measure of damages;
 23 and whether certain Defendants exercised actual power or control over primary violators giving
 24 rise to liability under §15 of the Securities Act of 1933.

25 c. Lead Plaintiffs’ asserted claims that the Defendants violated Sections 11,
 26 12(a)(2) and 15 of the Securities Act of 1933 are typical of the Class, and accordingly satisfy the
 27 requirements of Federal Rule 23(a)(3).

1 d. Lead Plaintiffs James Rafton and James Darst, Jr. and their counsel, Sparer
2 Law Group, will fairly and adequately protect the interest of the Class, and accordingly their
3 appointment satisfies Federal Rule 23(a)(4).

4 e. Lead Plaintiffs also satisfy the requirements of Federal Rule 23(b)(3)
5 since questions of law and fact common to the Class predominate over any questions affecting
6 only individual members and a class action is superior to other available methods for the fair and
7 efficient adjudication of this matter.

8 6. Lead Plaintiffs James Rafton and James Darst, Jr., are hereby appointed
9 representatives of the Class.

10 7. Sparer Law Group is hereby appointed Class Counsel.

11 CLASS NOTICE

12 8. The Court approves the form and content of the “Notice of Pendency and
13 Proposed Settlement of Class Action for Purchasers with Identified Transactions” and the
14 “Notice of Pendency and Proposed Settlement of Class Action for Unidentified Purchasers or
15 Purchasers with Unidentified Transactions,” (collectively, the “Notice”), and the Publication
16 Notice, in substantially the forms annexed hereto as Exhibits A-1, A-2, and A-5.

17 9. The Court finds that the mailing and distribution of the Notice and publishing of
18 the Publication Notice, as set forth herein, meet the requirements of Federal Rule 23(c)(2)(B),
19 due process, and Section 27 of the Securities Act of 1933, 15 U.S.C. §77z-1(a)(7), as amended by
20 the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), and constitutes the best
21 notice practicable under the circumstances and shall constitute due and sufficient notice to all
22 persons and entities entitled thereto.

23 CLAIMS PROCESS AND ADMINISTRATION

24 10. The Court hereby appoints the Garden City Group, Inc. as the Claims
25 Administrator to supervise and execute the notice program as well as the administration of the
26 Settlement, as set forth in Paragraph 9 of this Order and as more fully set forth in the Stipulation;

1 Rydex Defendants shall provide to the Claims Administrator in electronic, searchable form: (1)
 2 the names and addresses and account data for all accounts reflected in Defendant's records as
 3 having acquired Rydex Fund shares during the Class Period; and (2) the names and addresses and
 4 account data of all broker-dealers or other intermediaries ("Intermediaries") reflected in
 5 Defendant's records as having acquired Rydex Fund shares on behalf of Class Members during
 6 the Class Period. This information and data shall be provided at no cost and in electronic,
 7 searchable form. In the event the Claims Administrator is unable, after reasonable efforts, to
 8 locate any Class Member utilizing this information, the Claims Administer may request that
 9 Defendants provide Social Security numbers of such Class Members. Defendants will comply
 10 with such requests to the extent that such numbers are accessible and provide such numbers on a
 11 confidential and limited basis.

12 b. Within eight (8) business days after entry of this Order, the Claims
 13 Administrator shall send a notification to all Intermediaries ("Intermediary Notification").
 14 Pursuant to this Order, the Intermediary Notification:

15 i. will request, in electronic, searchable form, the name(s),
 16 address(es), and all transaction data for all accounts that acquired Rydex Fund shares during the
 17 Class Period through an Intermediary ("Intermediary Accounts");

18 ii. shall inform the Intermediaries that, if it is not feasible to provide
 19 the name(s), address(es), and Fund transaction data for each Intermediary Account within fifteen
 20 (15) business days from the date of such notification, the Intermediary shall promptly contact the
 21 Claims Administrator to make arrangements to provide full information or explain the failure to
 22 do so.

23 c. The Court hereby orders the Intermediaries to provide all Intermediary
 24 Account information by the deadlines set forth in Paragraph 10(b) in order for all Class Members
 25 to benefit from the proposed Settlement.

26 d. After the Claims Administrator has sent the Intermediary Notification, the
 27 Rydex Defendants will make reasonable good-faith efforts to inform the Intermediaries of the
 28 importance of their release of the name(s), address(es), and Fund transaction data for each

1 Intermediary Account. Defendants are not obligated to bear any costs associated with obtaining
 2 such Intermediary Account information from the Intermediaries.

3 e. Within fifteen (15) business days of the entry of this Order, Defendants
 4 shall pay or cause to be paid the Settlement Amount into the Escrow Account. The Gross
 5 Settlement Fund shall be used only for the purposes specified in the Stipulation.

6 f. Within thirty-three (33) business days after entry of this Order, the Claims
 7 Administrator shall commence mailing the Notice of Pendency and Proposed Settlement of Class
 8 Action for Identified Purchasers with Identified Transactions (substantially in the form annexed
 9 as Exhibit A-1 hereto) and a Record of Fund Transactions (substantially in the form annexed as
 10 Exhibit A-4 hereto) to those Class Members for whom the Claims Administrator has obtained the
 11 requisite contact information and transaction data or later obtains such information and data.

12 g. If a Class Member believes that the Record of Fund Transactions provided
 13 by the Claims Administrator is incorrect or incomplete, and does not wish to be excluded from
 14 the Class, the Class Member must return a Dispute Form, substantially in the form included with
 15 the Record of Fund Transactions (Exhibit A-4 hereto) to the Claims Administrator no later than
 16 thirty (30) days after the date of the letter from the Claims Administrator enclosing the Notice
 17 and Record of Fund Transactions. Within thirty (30) calendar days after the date of Mailing of
 18 the Dispute Form, the Claims Administrator shall respond to the Class Member by accepting or
 19 rejecting it in whole or in part.

20 h. Any Class Member whose Dispute Form has been rejected in whole or in
 21 part by the Claim Administrator, and who desires to contest such rejection, must, within thirty
 22 (30) calendar days after the date of mailing of the notice of such rejection, serve upon the Claims
 23 Administrator a notice and statement of reasons indicating the Class Member's grounds for
 24 contesting the rejection, along with any supporting documentation, and, if sought, a request for
 25 review thereof by the District Court. If any dispute concerning a Dispute Form cannot be
 26 otherwise resolved, Class Counsel shall thereafter present the request for review to the District
 27 Court for a final determination.

21 1. Any Class Member whose Proof of Claim has been rejected in whole or in
22 part by the Claim Administrator and who desires to contest such rejection must, within thirty (30)
23 calendar days after the date of mailing of the notice of such rejection, serve upon the Claims
24 Administrator a notice and statement of reasons indicating the Class Member's grounds for
25 contesting the rejection, along with any supporting documentation, and, if sought, a request for
26 review thereof by the District Court. If a dispute concerning a Proof of Claim cannot be
27 otherwise resolved, Class Counsel shall thereafter present the request for review to the District
28 Court for a final determination.

12 o. Concurrently with the filing of the motion for final approval of the
13 Settlement and in any event no later than thirty-five (35) days prior to the Final Settlement
14 Hearing, Class Counsel shall file with the Clerk of this Court, declaration(s) of the person or
15 persons under whose general direction the mailing of the Notice and the publication of the
16 Publication Notice were made, showing that such mailing and publication have occurred in
17 accordance with this Order.

26 q. As set forth in the Stipulation, immediately after payment of the Gross
27 Settlement Fund to the Escrow agent and without further order of the Court, Class Counsel may
28 direct payment from the Escrow Account up to \$300,000 as provided in the Stipulation to pay the

1 actual, reasonable costs of providing notice to the Settlement Class, locating Class Members,
 2 assisting with the filing and processing of Proof of Claim Forms and Dispute Forms,
 3 administering the Gross Settlement Fund, and paying Taxes, escrow fees and costs. This
 4 advancement of notice and administration costs, to the extent already expended or incurred for
 5 these purposes, shall not be subject to repayment if the Settlement does not become effective, and
 6 Lead Plaintiffs and Class Counsel shall have no obligation to repay any amounts actually and
 7 properly incurred or disbursed for the above purposes. Upon the occurrence of the Effective
 8 Date, Lead Plaintiffs may file additional motions for approval of additional amounts from the
 9 Gross Settlement Fund for payment of reasonable costs of providing Notice and administering
 10 the Gross Settlement Fund.

11 **REQUESTS FOR EXCLUSION**

12 11. Class Members shall be bound by all orders, determinations and judgments in this
 13 Action, whether favorable or unfavorable, unless a request for exclusion from the Class in a
 14 timely and proper manner, as provided herein.

15 12. Class Members may request to be excluded from the Class.

16 13. In order to be valid, a request for exclusion must: (i) set forth the name, address,
 17 and telephone number of the person or entity requesting exclusion; (ii) state that the person or
 18 entity requests exclusion from the Class in *Rafton v. Rydex Series Funds*, Case No. 10-cv-1171
 19 LHK; (iii) be signed and dated by the person or entity requesting exclusion; and (iv) be
 20 postmarked no later than twenty one (21) days prior to the date of the Final Approval Hearing.
 21 Requests for exclusion must be mailed to the Claims Administrator at the address set forth in the
 22 Notice and Publications Notice. Requests for exclusion may also be submitted electronically by
 23 following the instructions on the claims administration website, www.rydexfundsettlement.com.
 24 The request for exclusion shall not be effective unless it provides all of the required information
 25 and is made within the time stated above, or the exclusion is otherwise accepted by the Claims
 26 Administrator or the Court.

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1 14. Class Members who timely and validly request exclusion from the Class shall not
 2 be eligible to receive any payment under the settlement as described in the Stipulation and the
 3 Notice, unless otherwise ordered by the Court.

4 **HEARING; RIGHT TO BE HEARD**

5 15. A Final Approval Hearing shall be held before this Court on January 5, 2012, at
 6 1:30 p.m., at the United States District Court for the Northern District of California, San Jose
 7 Courthouse, Courtroom 8, 4th Floor, 280 South 1st Street, San Jose, CA 95113, to determine
 8 whether: (i) the Settlement of the Action on the terms and conditions set forth in the Stipulation
 9 is fair, reasonable and adequate to the Class and should be approved by the Court; (ii) whether a
 10 Judgment dismissing the Action with prejudice in the form attached as Exhibit B to the
 11 Stipulation should be entered; (iii) whether the proposed Plan of Allocation set forth in the
 12 Notice should be approved; (iv) whether the motion for reimbursement of Lead Plaintiffs' time
 13 and expenses should be approved; (v) whether the motion for an award of Class Counsel's
 14 attorneys' fees and reimbursement of Class Counsel's litigation expenses should be approved;
 15 and (vi) to consider any other matters that may properly be brought before the Court in
 16 connection with the Settlement.

17 16. Class Counsel's motion for approval of the Settlement and Plan of Allocation and
 18 any motion for reimbursement of Lead Plaintiffs' time and expenses and motion for an award of
 19 Class Counsel's attorneys' fees and reimbursement of litigation expenses shall be filed and
 20 served no later than thirty-five (35) days prior to the date of the Final Approval Hearing; any
 21 opposition thereto shall be filed and served no later than twenty-one (21) days prior to the
 22 Hearing; and any Reply in Support of the motions shall be filed and served no later than fourteen
 23 (14) days prior to the Hearing.

24 17. Any Class Member may object to the matters set for consideration at the Final
 25 Approval Hearing by submitting written objections thereto. The written objection must state that
 26 it is made in connection with the matter of *Rafton v. Rydex Series Funds*, Case No. 10-cv-1171
 27 LHK, and must include the objecting Class Member's name, address, telephone number,
 28 signature, the number of Rydex Fund shares purchased during the period from August 1, 2007

1 through July 31, 2009, inclusive, the reasons for the objection and all supporting papers. Any
 2 objection must be postmarked no later than twenty-one (21) days prior to the date of the Final
 3 Approval Hearing and mailed to the Court, Counsel for Plaintiffs and Counsel for Defendants at
 4 the following addresses:

5 *Court:*

6 Richard W. Wierking
 7 Office of the Clerk
 United States District Court
 8 Northern District of California, San Jose Division
 Robert F. Peckham Federal Building
 9 280 South 1st Street San Jose, CA 95113

Counsel for Plaintiffs:

Alan W. Sparer
 Sparer Law Group
 100 Pine Street, 33rd Floor
 San Francisco, CA 94111-5128

10 *Counsel for Defendants:*

11 Matthew L. Larrabee
 12 Dechert LLP
 One Maritime Plaza, Suite 2300
 13 San Francisco, California 94111-3513

Michael K. Wolensky
 Schiff Hardin LLP
 One Market, Spear Street Tower, 32nd Floor
 San Francisco, CA 94105

14 18. In order to speak at the settlement hearing in person or through legal counsel, a
 15 Class Member must send written notice stating that it is his or her intention to appear in *Rafton v.*
 16 *Rydex Series Funds*, Case No. 10-cv-1171 LHK. The notice must be signed by the Class
 17 Member or counsel and must include the name, address, telephone number of the Class Member
 18 and counsel, if applicable, and the number of Rydex Fund shares the Class Member purchased
 19 during the Class Period. If a Class Member or counsel intends to present evidence at the
 20 Settlement Hearing, the notice must identify any witnesses that will be called and any exhibits
 21 that will be introduced. Notices of intention to appear must be postmarked no later than seven
 22 (7) days prior to the Final Approval Hearing and be mailed to the Court, Class Counsel for
 23 Plaintiffs and Counsel for Defendants at the addresses set forth in Paragraph 17 of this Order.

24 19. Any Class Member who does not make his, her or its objection in the manner
 25 provided for herein shall be deemed to have waived such objection and shall forever be
 26 foreclosed from making any objection to the fairness of the Settlement as reflected in the
 27 Stipulation, the Plan of Allocation, the application of Lead Plaintiffs for reimbursement of
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1 expenses, the application of Class Counsel for an award of attorneys' fees and reimbursement of
 2 expenses or any other matter properly before the Court at the Final Approval Hearing.

3 20. By objecting to any matter which is the subject of the Final Approval Hearing, a
 4 person or entity shall be deemed to have submitted to the jurisdiction of the Court with respect to
 5 the person's or entity's objection or request to be heard and the subject matter of the Settlement,
 6 including but not limited to, enforcement of the terms of the Settlement as provided in the
 7 Stipulation.

8 21. At or after the Final Approval Hearing, the Court shall determine whether the
 9 Settlement, the Plan of Allocation, the proposed Judgment, the Motion of Lead Plaintiffs' for
 10 reimbursement of time and expenses, the Motion of Class Counsel for an award of attorneys' fees
 11 and reimbursement of expenses, and any other matter properly brought before the Court shall be
 12 approved or ordered.

13 **MISCELLANEOUS MATTERS**

14 22. The passage of title and ownership of the Settlement Fund to the Escrow Agent in
 15 accordance with the terms and obligations of the Stipulation is approved. No person who is not a
 16 Class Member or Class Counsel shall have any right to any portion of, or to any distribution of,
 17 the Net Settlement Fund unless otherwise ordered by the Court or otherwise provided in the
 18 Stipulation.

19 23. All funds held in the Escrow Account shall be deemed and considered to be in
 20 *custodia legis* of the Court, and shall remain subject to the exclusive jurisdiction of the Court,
 21 until such time as such funds shall be distributed pursuant to this Stipulation and/or further
 22 order(s) of the Court.

23 24. The administration and consummation of the Settlement as embodied in the
 24 Stipulation shall be under the authority of this Court, and the Court shall retain exclusive,
 25 continuing jurisdiction for the purpose of enforcing the terms of the Stipulation and for any other
 26 purpose related to the prosecution or resolution of the Action.

27 25. The Defendants shall not have any responsibility for or liability with respect to the
 28 Plan of Allocation or any application for attorneys' fees or reimbursement of expenses submitted

1 by Class Counsel or Lead Plaintiffs, and such matters will be considered separately from the
 2 fairness, reasonableness, and adequacy of the Settlement.

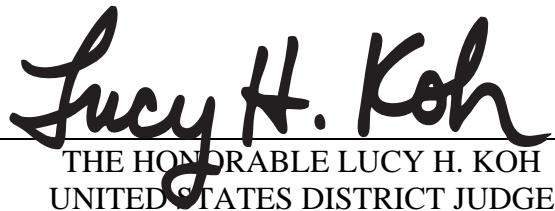
3 26. This Preliminary Approval Order, the terms of this Stipulation (whether the
 4 Stipulation becomes final or not), the negotiations leading up to this Stipulation, the fact of the
 5 Settlement, and the proceedings taken pursuant to the Settlement, shall not: (1) be construed as
 6 an admission of liability or an admission of any claim or defense on the part of any party to the
 7 Action (“Party”), in any respect; (2) form the basis for any claim of estoppel by any third party
 8 against any of the Parties; or (3) be admissible in any action, suit, proceeding, or investigation as
 9 evidence, or as an admission, of any wrongdoing or liability whatsoever by any Party or as
 10 evidence of the truth of any of the claims or allegations contained in any complaint or Answer
 11 filed in the Action, or deemed to be evidence of an admission or concession that any Class
 12 Member has suffered any damages, harm, or loss. Neither this Preliminary Approval Order, nor
 13 the Stipulation, nor any of their terms and provisions, nor any of the negotiations or proceedings
 14 connected with them, nor any action taken to carry out this Preliminary Approval Order or
 15 Stipulation by any of the Parties shall be referred to, offered into evidence, or received in
 16 evidence in any pending or future civil, criminal or administrative action or proceeding, except in
 17 a proceeding to enforce this Preliminary Approval Order or the Stipulation, to enforce any
 18 insurance rights, to defend against the assertion of Released Claims (including to support a
 19 defense or counterclaim based on principles of res judicata, collateral estoppel, release, good
 20 faith settlement, judgment bar or reduction), or by Class Counsel to demonstrate its adequacy to
 21 serve as class counsel pursuant to Federal Rule of Civil Procedure 23(g) (or its state law
 22 analogs), lead counsel pursuant to the PSLRA, or as otherwise required by law.

23 27. In the event that the Settlement does not become effective in accordance with the
 24 terms of the Stipulation or the Effective Date does not occur, or in the event that the Gross
 25 Settlement Fund, or any portion thereof, is returned to the Defendants, then this, and all other,
 26 Orders shall be rendered null and void to the extent provided by and in accordance with the
 27 Stipulation, the Stipulation shall be deemed terminated, and the parties shall return to their
 28 positions without prejudice in any way, as provided for in the Stipulation.

1 28. The Court reserves the right to adjourn the date of the Final Approval Hearing or
2 any continuance thereof without further notice to the Class Members, and to retain jurisdiction to
3 consider all further applications arising out of or connected with the proposed Settlement or
4 otherwise warranted. The Court may approve the Settlement or Stipulation with such
5 modifications as may be agreed to by the settling Parties, if appropriate, without further notice to
6 the Class.

7 IT IS SO ORDERED.

8 Dated: September 13, 2011



THE HONORABLE LUCY H. KOH
UNITED STATES DISTRICT JUDGE

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